

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X		
GREGORY YASHGUR, on Behalf of Himself	:	Case No: 07-CV-10569 (JSR)
and a Class of Persons Similarly Situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MERRILL LYNCH & CO., INC.,	:	
ADMINISTRATIVE COMMITTEE OF THE	:	
MERRILL LYNCH & CO., INC. 401(K) SAVING	:	
AND INVESTMENT PLAN, LOUIS DIMARIA;	:	
STAN O'NEAL; ALBERTO CRIBIORE; CAROL	:	
T. CHRIST; ARMANDO M. CODINA; VIRGIS	:	
W. COLBERT; JOHN D. FINNEGAN; JUDITH	:	
MAYHEW JONAS; AULANA L. PETERS;	:	
JOSEPH W. PRUEHER; ANN N. REESE; AND	:	
CHARLES O. ROSSOTTI , and JOHN DOES	:	
1-30,	:	
	:	
Defendants.	:	
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-----X		
ELIZABETH ESTEY, individually and on behalf	:	Case No: 07-CV-10268 (LBS)
of all others similarly situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MERRILL LYNCH & CO., INC.; MERRILL	:	
LYNCH & CO., INC. PLAN "INVESTMENT	:	
COMMITTEE," MERRILL LYNCH & CO., INC.	:	
PLAN ADMINISTRATIVE COMMITTEE,	:	
MERRILL LYNCH & CO. INC.	:	
MANAGEMENT DEVELOPMENT AND	:	
COMPENSATION COMMITTEE, LOUIS	:	
DIMARIA, E. STANLEY O'NEAL, ALBERTO	:	
CRIBIORE, ARMANDO M. CODINA, VIRGIS	:	
W. COLBERT, JOHN D. FINNEGAN, AULANA	:	
L. PETERS and JOHN DOES 1-10,	:	
	:	
Defendants.	:	
	:	
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MARY GIDARO, individually and on behalf of	:	Case No: 07-CV-10273 (LBS)
all others similarly situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MERRILL LYNCH & CO., INC.; STAN O'NEAL;	:	
LOU DIMARIA, INVESTMENT COMMITTEE	:	
OF THE MERRILL LYNCH SAVINGS AND	:	
INVESTMENT PLAN; ADMINISTRATIVE	:	
COMMITTEE OF THE MERRILL LYNCH	:	
SAVINGS AND INVESTMENT PLAN; and	:	
JOHN DOS 1-30,	:	
	:	
Defendants.	:	
	:	
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TARA MOORE, individually and on behalf of	:	Case No: 07-CV-10398 (DC)
all others similarly situated,	:	
	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
	:	
MERRILL LYNCH & CO., INC.; MERRILL	:	
LYNCH & CO., INC. PLAN "INVESTMENT	:	
COMMITTEE," MERRILL LYNCH & CO., INC.	:	
PLAN ADMINISTRATIVE COMMITTEE,	:	
MERRILL LYNCH & CO. INC.	:	
MANAGEMENT DEVELOPMENT AND	:	
COMPENSATION COMMITTEE, LOUIS	:	
DIMARIA, E. STANLEY O'NEAL, ALBERTO	:	
CRIBIORE, ARMANDO M. CODINA, VIRGIS	:	
W. COLBERT, JOHN D. FINNEGAN, AULANA	:	
L. PETERS and JOHN DOES 1-10,	:	
	:	
Defendants.	:	
	:	
	:	
-----X		

-----X
CHRISTINE DONLON, individually and on behalf :
Of all others similarly situated, :

Plaintiff, :

v. :

MERRILL LYNCH & CO., INC., E. STANLEY :
O'NEAL, CAROL T. CHRIST, ARMANDO M. :
CODINA, VIRGIS W. COLBERT, JILL K. :
CONWAY, ALBERTO CRIBIORE, LOUIS :
DIMARIA, JOHN D. FINNEGAN, JUDITH :
MAYHEW JONAS, AULANA L. PETERS, :
JOSEPH W. PRUEHER, ANN N. REESE, :
CHARLES O. ROSSOTTI, JOHN DOES 1-20 :
(BEING CURRENT AND FORMER MEMBERS :
OF THE BENEFITS ADMINISTRATION :
COMMITTEE OF THE MERRILL LYNCH & :
CO. INC. EMPLOYEE STOCK OWNERSHIP :
PLAN) AND JOHN DOES 21-40 (BEING :
CURRENT AND FORMER MEMBERS OF :
THE INVESTMENT COMMITTEE OF THE :
MERRILL LYNCH & CO., INC. EMPLOYEE :
STOCK OWNERSHIP PLAN), :

Defendants. :

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Case No: 07-CV-10661 (CM)

-----X
CARL ESPOSITO, on Behalf of Himself
and a Class of Persons Similarly Situated,

Plaintiff,

v.

MERRILL LYNCH & CO., INC., E. STANLEY
O'NEAL, CAROL T. CHRIST, ARMANDO M.
CODINA, VIRGIS W. COLBERT, JILL K.
CONWAY, ALBERTO CRIBORE, JOHN D.
FINNEGAN, JUDITH MAYHEW JONAS,
DAVID K. NEWBIGGING, AULANA L.
PETERS, JOSEPH W. PRUEHER, ANN N.
REESE, CHARLES O. ROSSOTTI, LOUIS
DIMARIA, PETER STINGI and JOHN AND
JANE DOES 1-20,

Defendants.
-----X

Case No: 07-CV-10687 (JGK)

-----X
SEAN SHAUGHNESSEY, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

MERRILL LYNCH & CO., INC.; MERRILL
LYNCH & CO., INC. INVESTMENT
COMMITTEE, MANAGEMENT
DEVELOPMENT AND COMPENSATION
COMMITTEE OF THE MERRILL LYNCH &
CO., INC. BOARD OF DIRECTORS, THE
MERRILL LYNCH TRUST COMPANY, FBS,
ADMINISTRATIVE COMMITTEE OF THE
MERRILL LYNCH & CO., INC. 401K SAVINGS
AND INVESTMENT PLAN, LOUIS DIMARIA,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, ALBERTO CRIBIORE, JOHN D.
FINNEGAN, AULANA L. PETERS, and JOHN
DOES 1-40,

Defendants.

Case No: 07-CV-10710 (GEL)

-----X
BARBARA BOLAND AND ANNA MOLIN,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

MERRILL LYNCH & CO., INC.; E. STANLEY
O'NEAL, CAROL T. CHRIST, ARMANDO M.
CODINA, VIRGIS W. COLBERT, JILL K.
CONWAY, ALBERTO CRIBIORE, JOHN D.
FINNEGAN, JUDITH MAYHEW JONAS,
DAVID K. NEWBIGGING, AULANA L.
PETERS, JOSEPH W. PRUEHER, ANN N.
REESE, CHARLES O. ROSSOTTI, LOUIS
DIMARIA, PETER STINGI and JOHN AND
JANE DOES 1-20,

Defendants.

Case No: 07-CV-11054 (MGC)

**NOTICE OF MOTION AND MOTION BY PLAINTIFF GREGORY YASHGUR FOR
CONSOLIDATION OF ALL RELATED ERISA ACTIONS AND
FOR APPOINTMENT OF A LEAD PLAINTIFF AND INTERIM LEAD COUNSEL**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 3, 2008, at 2:15 p.m., or as soon thereafter as the matter may be heard, Gregory Yashgur, plaintiff in *Yashgur v. Merrill Lynch & Co., Inc. et al.*, No. 07-cv-11569 (JSR) (the “Yashgur Action”), will move this Court before the Honorable Leonard B. Sand, United States District Judge, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 15A, New York, New York, 10007, for an order:

- (i) consolidating all related ERISA actions in this district against Merrill Lynch & Co., Inc. (“Merrill Lynch”);
- (ii) appointing Gregory Yashgur as the lead plaintiff on behalf of a proposed class of participants and beneficiaries of the Merrill Lynch & Co., Inc. 401(k) Savings & Investment Plan in the consolidated action;
- (iii) appointing his counsel, Stull, Stull & Brody (“SSB”), as interim lead counsel for the proposed class in the consolidated action, and;
- (iv) entering the proposed order filed herewith and annexed hereto as Exhibit A.

This Motion is made pursuant to Fed. R. Civ. P. 23(g) and 42(a) and the Manual for Complex Litigation-Fourth (2005). This Motion is based on the accompanying Memorandum of Points and Authorities in support thereof and the Declaration of Edwin J. Mills filed herewith.

Dated: December 21, 2007

STULL, STULL & BRODY

By: s/ Edwin J. Mills
Edwin J. Mills (EM-7117)
Howard T. Longman (HL-2489)
Michael J. Klein (MK-8187)
6 East 45th Street
New York, NY 10017
Tel: (212) 687-7230
Fax: (212) 490-2022

**Counsel for Plaintiff Gregory Yashgur
and Proposed Interim Lead Counsel for
the Class**

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GREGORY YASHGUR, on Behalf of Himself	:	Case No: 07-CV-10569 (JSR)
and a Class of Persons Similarly Situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MERRILL LYNCH & CO., INC.,	:	
ADMINISTRATIVE COMMITTEE OF THE	:	
MERRILL LYNCH & CO., INC. 401(K) SAVING	:	
AND INVESTMENT PLAN, LOUIS DIMARIA;	:	
STAN O'NEAL; ALBERTO CRIBIORE; CAROL	:	
T. CHRIST; ARMANDO M. CODINA; VIRGIS	:	
W. COLBERT; JOHN D. FINNEGAN; JUDITH	:	
MAYHEW JONAS; AULANA L. PETERS;	:	
JOSEPH W. PRUEHER; ANN N. REESE; AND	:	
CHARLES O. ROSSOTTI , and JOHN DOES	:	
1-30,	:	
	:	
Defendants.	:	
-----X		

-----X
 ELIZABETH ESTEY, individually and on behalf :
 of all others similarly situated, :

Plaintiff, :

v. :

MERRILL LYNCH & CO., INC.; MERRILL :
 LYNCH & CO., INC. PLAN "INVESTMENT :
 COMMITTEE," MERRILL LYNCH & CO., INC. :
 PLAN ADMINISTRATIVE COMMITTEE, :
 MERRILL LYNCH & CO. INC. :
 MANAGEMENT DEVELOPMENT AND :
 COMPENSATION COMMITTEE, LOUIS :
 DIMARIA, E. STANLEY O'NEAL, ALBERTO :
 CRIBIORE, ARMANDO M. CODINA, VIRGIS :
 W. COLBERT, JOHN D. FINNEGAN, AULANA :
 L. PETERS and JOHN DOES 1-10, :

Defendants. :

Case No: 07-CV-10268 (LBS)

-----X
 MARY GIDARO, individually and on behalf of :
 all others similarly situated, :

Plaintiff, :

v. :

MERRILL LYNCH & CO., INC.; STAN O'NEAL; :
 LOU DIMARIA, INVESTMENT COMMITTEE :
 OF THE MERRILL LYNCH SAVINGS AND :
 INVESTMENT PLAN; ADMINISTRATIVE :
 COMMITTEE OF THE MERRILL LYNCH :
 SAVINGS AND INVESTMENT PLAN; and :
 JOHN DOS 1-30, :

Defendants. :

Case No: 07-CV-10273 (LBS)

-----X

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TARA MOORE, individually and on behalf of	:	Case No: 07-CV-10398 (DC)
all others similarly situated,	:	
	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
	:	
MERRILL LYNCH & CO., INC.; MERRILL	:	
LYNCH & CO., INC. PLAN "INVESTMENT	:	
COMMITTEE," MERRILL LYNCH & CO., INC.	:	
PLAN ADMINISTRATIVE COMMITTEE,	:	
MERRILL LYNCH & CO. INC.	:	
MANAGEMENT DEVELOPMENT AND	:	
COMPENSATION COMMITTEE, LOUIS	:	
DIMARIA, E. STANLEY O'NEAL, ALBERTO	:	
CRIBIORE, ARMANDO M. CODINA, VIRGIS	:	
W. COLBERT, JOHN D. FINNEGAN, AULANA	:	
L. PETERS and JOHN DOES 1-10,	:	
	:	
Defendants.	:	
	:	
	:	
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-----X
CHRISTINE DONLON, individually and on behalf :
Of all others similarly situated, :
 :
Plaintiff, :
 :
v. :
 :
MERRILL LYNCH & CO., INC., E. STANLEY :
O'NEAL, CAROL T. CHRIST, ARMANDO M. :
CODINA, VIRGIS W. COLBERT, JILL K. :
CONWAY, ALBERTO CRIBIORE, LOUIS :
DIMARIA, JOHN D. FINNEGAN, JUDITH :
MAYHEW JONAS, AULANA L. PETERS, :
JOSEPH W. PRUEHER, ANN N. REESE, :
CHARLES O. ROSSOTTI, JOHN DOES 1-20 :
(BEING CURRENT AND FORMER MEMBERS :
OF THE BENEFITS ADMINISTRATION :
COMMITTEE OF THE MERRILL LYNCH & :
CO. INC. EMPLOYEE STOCK OWNERSHIP :
PLAN) AND JOHN DOES 21-40 (BEING :
CURRENT AND FORMER MEMBERS OF :
THE INVESTMENT COMMITTEE OF THE :
MERRILL LYNCH & CO., INC. EMPLOYEE :
STOCK OWNERSHIP PLAN), :
 :
Defendants. :
 :
-----X

Case No: 07-CV-10661 (CM)

-----X	:	
CARL ESPOSITO, on Behalf of Himself	:	Case No: 07-CV-10687 (JGK)
and a Class of Persons Similarly Situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MERRILL LYNCH & CO., INC., E. STANLEY	:	
O'NEAL, CAROL T. CHRIST, ARMANDO M.	:	
CODINA, VIRGIS W. COLBERT, JILL K.	:	
CONWAY, ALBERTO CRIBORE, JOHN D.	:	
FINNEGAN, JUDITH MAYHEW JONAS,	:	
DAVID K. NEWBIGGING, AULANA L.	:	
PETERS, JOSEPH W. PRUEHER, ANN N.	:	
REESE, CHARLES O. ROSSOTTI, LOUIS	:	
DIMARIA, PETER STINGI and JOHN AND	:	
JANE DOES 1-20,	:	
	:	
Defendants.	:	
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-----X
SEAN SHAUGHNESSEY, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

MERRILL LYNCH & CO., INC.; MERRILL
LYNCH & CO., INC. INVESTMENT
COMMITTEE, MANAGEMENT
DEVELOPMENT AND COMPENSATION
COMMITTEE OF THE MERRILL LYNCH &
CO., INC. BOARD OF DIRECTORS, THE
MERRILL LYNCH TRUST COMPANY, FBS,
ADMINISTRATIVE COMMITTEE OF THE
MERRILL LYNCH & CO., INC. 401K SAVINGS
AND INVESTMENT PLAN, LOUIS DIMARIA,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, ALBERTO CRIBIORE, JOHN D.
FINNEGAN, AULANA L. PETERS, and JOHN
DOES 1-40,

Defendants.

Case No: 07-CV-10710 (GEL)

-----X
BARBARA BOLAND AND ANNA MOLIN,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

MERRILL LYNCH & CO., INC.; E. STANLEY
O'NEAL, CAROL T. CHRIST, ARMANDO M.
CODINA, VIRGIS W. COLBERT, JILL K.
CONWAY, ALBERTO CRIBIORE, JOHN D.
FINNEGAN, JUDITH MAYHEW JONAS,
DAVID K. NEWBIGGING, AULANA L.
PETERS, JOSEPH W. PRUEHER, ANN N.
REESE, CHARLES O. ROSSOTTI, LOUIS
DIMARIA, PETER STINGI and JOHN AND
JANE DOES 1-20,

Defendants.

Case No: 07-CV-11054 (MGC)

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**[PROPOSED] ORDER CONSOLIDATING ALL RELATED ERISA ACTIONS
AND APPOINTING A LEAD PLAINTIFF AND INTERIM LEAD COUNSEL**

This Court, having considered the motion of Gregory Yashgur (“Yashgur”) for consolidation of all related ERISA actions and appointment of a lead plaintiff and interim lead counsel and for related relief, hereby orders as follows:

IT IS HEREBY ORDERED THAT:

1. The matter shall be identified as: *In re Merrill Lynch ERISA Litigation*, and the files of this action shall be maintained under Civil Action No. 07-CV-10268 (LBS). The following actions are hereby consolidated under this caption:
 - a. *Estey v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10268 (LBS)
 - b. *Gidaro v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10273 (LBS)
 - c. *Moore v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10398 (DC)
 - d. *Yashgur v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10569 (JSR)
 - e. *Donlon v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10661 (CM)
 - f. *Esposito v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10687 (JGK)
 - g. *Shaughnessey v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10710 (GEL)
 - h. *Boland et al v. Merrill Lynch & Co, Inc et al*, No. 07-CV-11054 (MGC)
2. Any other actions now pending or hereafter filed in this District which arise out of the same facts as alleged in these related actions shall be consolidated for all purposes if, as and when the Court is apprised of them. The parties shall notify the Court of any other action which is pending in this District which may be related to the subject matter of this action if and when they become aware of such actions.
3. Every pleading filed in this action, or in any separate action included herein, shall

bear the following caption:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re MERRILL LYNCH ERISA LITIGATION) Civil Action No. 07-CV-10268 (LBS)

This Document Relates To:

All Actions.

CLASS ACTION

4. A Master Docket and a Master File are hereby established for the cases governed by this Order. Separate dockets shall continue to be maintained for each of the individual actions, and entries shall be made in the docket of each individual action in accordance with the regular procedures of the Clerk of Court, except as modified by this Order.

5. When a document is filed and the caption shows that it is applicable to this action, the Clerk of the Court shall file such document in the Master File and note such filing on the Master Docket. No further copies need to be filed and no other docket entries need be made.

6. When a document is filed and the case caption shows that it is to be applicable to only one of the consolidated actions, the Clerk of the Court will file and docket such document in both the Master File and that of the individual case.

7. When a document is filed and the caption shows that is to be applicable to more than one but fewer than all of the consolidated actions, the Clerk of the Court will file such document in the Master File only, but shall docket such filing on the Master Docket and the docket of each applicable action.

8. If any other case alleging violations of ERISA claims arising out of the same or substantially similar facts as alleged in the Action is filed in this Court or transferred from here

or another court (a “related case”), the clerk shall: (a) file a copy of this Order in the separate file for the related case; (b) mail a copy of this Order to counsel for the plaintiff(s) in the related case; (c) mail a copy of this Order to counsel for each defendant in the related case not already a party to any case then included in *In re Merrill Lynch ERISA Litigation*; and (d) make an appropriate entry in the Master Docket.

9. The Court requests the assistance of counsel in calling to the attention of the Clerk the filing or transfer of any case which might be properly consolidated as part of *In re Merrill Lynch ERISA Litigation* pursuant to the provisions of this Order.

10. All discovery taken in the Action will apply to any subsequently filed and consolidated actions, and the parties will not be required to repeat discovery already undertaken in the Action.

11. Gregory Yashgur is appointed the lead plaintiff.

12. Pursuant to Fed. R. Civ. P. 23(g), the law firm of Stull, Stull & Brody is appointed interim lead counsel for the purported Class.

a. Interim Lead Counsel is vested by the Court with the following responsibilities and duties:

- i. To coordinate the preparation and filing of a Consolidated Amended Complaint, and any subsequent pleadings;
- ii. To coordinate the briefing and argument of all motions;
- iii. To coordinate and conduct all discovery, pre-trial and trial proceedings for all plaintiffs;
- iv. To call meetings of plaintiffs’ counsel as they deem appropriate or necessary from time to time;

- v. To initiate and conduct all settlement negotiations for plaintiffs with counsel for defendants;
 - vi. To provide general coordination of activities of counsel on their side and to delegate work responsibilities to selected counsel as may be required; and
 - vii. To perform such other duties as may be expressly authorized by further order of the Court.
- b. Interim Lead Counsel shall make all work assignments in such a manner as to conduct the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.
 - c. Defendants' counsel may rely upon all agreements made with Interim Lead Counsel and such agreements shall be binding on all plaintiffs.
 - d. No motion, request for discovery, or other pretrial proceeding shall be initiated or served by any plaintiff except through Interim Lead Counsel.

DATED: December 21, 2007

Leonard B. Sand
United States District Judge